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C O N F I D E N T I A L SECTION 01 OF 02 THE HAGUE 001664

SIPDIS

DEPARTMENT FOR S/WCI - SCHEFFER/WARRICK, S/SA - O'BRIEN,  
DRL - KOH/SPENCER, L - MATHESON, L/EUR - LAHNE, S/CT -  
SHEEHAN/BAIR, INR/WCAD - DONAHUE/MORIN, EUR/SCE - COUNTRYMAN

E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE ICTY  
TAGS: PHUM NL ICTY ICTR  
SUBJECT: ICTY: ICTY COMMENTS ON USG PROPOSAL FOR WITNESS  
RELOCATION ARRANGEMENTS

REF: A. A STATE 55166  
B. B 99 THE HAGUE 2224  
C. 99 THE HAGUE 1324

1. (U) Begin Summary: As a follow-up to Ambassador Scheffer's 28 March letter to the Registrar of the International Criminal Tribunal for the Former Yugoslavia (ICTY) regarding possible relocation of Tribunal witnesses to the United States (Ref A), Embassy legaloffs had discussions with representatives from the ICTY Registry and the Victim Witness Unit (VWU). Although certain aspects of the USG proposal were very well-received, ICTY representatives were generally disappointed by the overall approach being suggested. The Acting Head of the VWU explained that the ICTY only proposes witnesses for relocation if their lives are at serious risk. Consequently, when a request for relocation is made it has to be acted upon quickly. The ICTY's overriding interest is in having some commitment from the USG to a quick, flexible procedure that would ensure a fast-track process through the normal INS procedures. ICTY representatives pressed hard on whether it might be possible to achieve some kind of break-through on expedited processing of requests. Specific comments and requests for additional information/clarification of the proposed approach based on existing authorities are provided below. End Summary.

2. (C) In discussions with Embassy legaloffs regarding the possibility of concluding an agreement or arrangement with the USG for relocation of witnesses to the United States, ICTY representatives were candid about their disappointment that the 28 March proposal did not provide for a special relocation procedure, nor a commitment to expedite the existing INS process. Underscoring the fact that the VWU only requests relocation for witnesses whose lives are at serious risk because of their testimonies, the ICTY reps noted that they well understand that a country making a commitment to relocate witnesses must operate within the provisions of its own laws. In that regard, they pointed out that other governments also have relied upon existing domestic authorities in defining the scope of benefits for relocated witnesses. Unlike the USG proposal, however, those other governments have committed themselves to special fast-track procedures for ICTY witnesses. In the case of Canada, for example, provisions are made for witnesses who need to be relocated on an urgent basis. Other agreements provide for the transfer to happen within two months, in the event of urgent cases, even sooner. The ICTY representatives were keen to know whether it might be possible to achieve some kind of break-through on expedited processing of requests.

3. (U) Benefits Package: The ICTY representatives indicated that the benefits package for relocated witnesses as described in Ambassador Scheffer's letter appeared to be very good. They requested certain details on the various benefits. In particular, the VWU would like to know what benefits witnesses would be entitled to after the initial eight months. In addition, they requested information on whether the witnesses would be entitled to housing, education, and travel documents to enable the witnesses to travel to and from the United States. Finally, they raised the need to relocate close family members (either together with the witness or at a later stage). In this regard they noted that the war in the former Yugoslavia had torn apart many families, and made many children orphans. Such children are often in the custody of distant relatives or even former neighbors. If possible, the VWU would like to ensure that such children or relatives qualify as close family members for relocation purposes.

4. (U) Requirement for Transcript of Witness's Testimony: The 28 March letter indicated that in order for the INS to assess whether the "persecutor bar" would apply in an individual case, the INS would require a transcript of the testimony of the witness. In response to this requirement,

the VWU raised several concerns. First, the ICTY representatives pointed out that in some cases a witness may need to be relocated before any appearance in court. In such cases, no transcript would exist. Second, they reiterated their earlier point that the ICTY only proposes relocation for witnesses whose lives are at risk due to the contents of their testimonies. Given the sensitivity of such testimonies, the Judges will normally grant protective measures for these witnesses and proceed in closed session. Thus, the transcripts of the proposed witnesses' testimonies will normally be confidential (i.e., sealed by the Court). Although some witnesses proposed for relocation may testify in open session under a pseudonym, the transcripts of such sessions are also not available for release.

15. (U) Instead of relying on a transcript of a witness's testimony, the VWU asked whether the INS would accept a statement from the ICTY that would contain information on the testimony, and explain why the testimony put the witness's life at risk. The VWU indicated that such a statement would have to be treated as classified by the INS or other authorities. In addition, the VWU representatives informed Embassy legaloffs that for all relocation requests, the Registrar receives a certification from the Office of the Prosecutor (OTP) that the witness in question is not a suspect or under investigation for any crime over which the ICTY has jurisdiction. The certification from the OTP also typically states that, as far as the Prosecutor is aware, the witness has not committed any other crimes.

16. (U) After Relocation: Assuming witnesses are relocated to the United States pursuant to a request from the ICTY, the ICTY would like to include a provision for the exchange of information so the ICTY can be kept informed of the witness's status once settled in the United States. For example, ICTY representatives would need to know about any threats that arise or any other problems that develop in relation to the witness's testimony. Similarly, they would need to know if a witness died or his/her whereabouts became unknown.

17. (U) In a related vein, the ICTY representatives indicated that they would like to include a provision in a relocation agreement or arrangement that in the (unlikely) event of extradition, the witness or any member of the relocated family should not be returned to the territory of the former Yugoslavia without the written consent of both the witness and the ICTY.

18. (U) Fingerprinting: Regarding the request for all witnesses proposed for relocation to be fingerprinted, the ICTY indicated that it is not technically equipped to provide fully legible fingerprint cards.

19. (U) Comment: Embassy notes that USG and ICTY reps have been engaged in efforts to negotiate a formal arrangement for the relocation of witnesses since September 1998. Despite support for this effort from Executive and Legislative branch officials, nothing concrete has been achieved. Embassy therefore recommends that if there is a consensus within the USG to conclude an agreement with the ICTY on this issue, face to face negotiations between ICTY reps and representatives from all relevant agencies (e.g., INS/DOJ/DOS) officials should be scheduled either in The Hague or in Washington in the near future. Alternatively, if no consensus to accommodate the ICTY's request for an expedited process exists, we should inform the ICTY that we are unable to meet its request at this time, but will continue to consider requests on an ad hoc basis under existing authorities. End Comment.

FENDRICK